

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CHRIS JOHNS,  
  
Plaintiff,  
  
v

Case No. 08-12272  
U.S. Magistrate Judge  
Michael J. Hluchaniuk  
Flint, Michigan  
June 17, 2009  
2:44 p.m.

BLUE CROSS BLUE SHIELD OF  
MICHIGAN,  
  
Defendant.

Ordered By:

U.S. MAGISTRATE JUDGE  
MICHAEL J. HLUCHANIUK

SETTLEMENT HEARING

APPEARANCES:

For the Plaintiff:  
(By Phone):

GERARD MANTESE, ESQ. (P34424)  
Mantese & Rossman  
1361 E. Big Beaver Road  
Troy, MI 48083  
248-457-9200

For the Defendant:  
(By Phone):

K. SCOTT HAMILTON, ESQ.  
(P44095)  
Dickinson, Wright  
500 Woodward Avenue  
Suite 4000  
Detroit, MI 48226-3425

Court Recorder:

Jennifer Chase

Transcriber:

Deborah Kremlick

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produced by transcription service.

1 (Court in Session)

2 THE CLERK: All rise. Court is now in session. The  
3 Honorable Magistrate Judge Michael Hluchaniuk presiding.

4 THE COURT: I said I'd give you a copy of that, to  
5 both sides.

6 THE CLERK: You may be seated. The Court will now  
7 hear -- I'm sorry, Judge.

8 THE COURT: I interrupted you, I'm sorry, so --

9 THE CLERK: The Court will now hear civil case Johns  
10 versus Blue Cross Blue Shield.

11 THE COURT: Good afternoon. On the record --

12 THE CLERK: If you could turn the speaker system up.

13 THE COURT: Good afternoon, gentlemen. On the  
14 record, we are here at this moment to put the terms of the  
15 agreement that has been reached today in this matter on the  
16 record.

17 And first of all, I want to thank the parties and the  
18 lawyers for engaging in these negotiations in a practical,  
19 realistic, and cooperative manner. And I think we have  
20 reached an agreement which is fair to both sides and serves  
21 the interest of justice overall and I thank you for your  
22 cooperation and your efforts in resolving this matter.

23 It is my understanding that this will be, except for the  
24 -- the remaining issues relating to the establishment and the  
25 certification of the class, and whatever the mechanical

1 process will be that's associated with that. This will be the  
2 final judgment and the -- the final terms of the agreement  
3 between the parties in this matter. Mr. Mantese, do you agree  
4 with that?

5 MR. MANTESE: Yes, Your Honor.

6 THE COURT: Mr. Hamilton, do you agree with that?

7 MR. HAMILTON: That's my understanding, yes.

8 THE COURT: All right. What I'm going to do is work  
9 from the draft that the plaintiffs had prepared in this matter  
10 and make modifications as are necessary to completely and  
11 accurately incorporate the agreement of the parties.

12 And I will certainly ask for the -- any corrections or  
13 changes that need to be made so that the record will be  
14 absolutely clear as to the terms before we leave today. And  
15 I'm just going to start reading from the beginning of the  
16 document that plaintiffs had prepared in this matter.

17 The parties having entered into settlement negotiations  
18 to resolve this litigation, and the parties having agreed to  
19 the terms below for consideration by the Court, it is hereby  
20 agreed as follows:

21 One, plaintiff will file a motion with the Court seeking  
22 certification of this case as a class action on the terms set  
23 forth below and defendant will not oppose such certification  
24 according to the terms set forth below.

25 Paragraph 2, Blue Cross Blue Shield of Michigan agrees to

1 pay all applied behavior analysis claims, and applied behavior  
2 analysis will be referred to throughout the document as ABA,  
3 so they will pay, that is Blue Cross Blue Shield of Michigan,  
4 will pay these claims for the period beginning May 1<sup>st</sup> of 2003.  
5 And that will encompass as a group, and I'm varying from the  
6 written document, any eligible claimant who is currently  
7 enrolled in the program at Beaumont Hospital.

8 And the program that we're referring to is -- we're going  
9 to call the gift program. I think that's clear to the parties  
10 and everyone else.

11 So, Blue Cross Blue Shield of Michigan agrees to pay for  
12 any individual who has obtained treatment through this program  
13 at Beaumont Hospital up to and including -- well, beginning  
14 with May the 1<sup>st</sup> of 2003, and up to and including any eligible  
15 claimant who is currently in the program as of today's date.  
16 And that payment will include assessment and diagnosis at the  
17 Center for Human Development at Beaumont. Claims will be paid  
18 both for insured and self funded plans.

19 Blue Cross Blue Shield of Michigan agrees to pay for ABA  
20 of such actual claims that were submitted and denied.  
21 Plaintiff will seek and defendant will not oppose  
22 certification of a class of persons consisting of all persons  
23 who had such claims denied as well as other persons that will  
24 be identified in Paragraph 3 as of -- as of today's date as we  
25 explained earlier.

1 Blue Cross Blue Shield of Michigan will provide an  
2 affidavit of its general counsel verifying that the above  
3 claims for treatment at Beaumont Hospital comprise all the  
4 claims for ABA therapy that were submitted to Blue Cross Blue  
5 Shield of Michigan during the covered period.

6 Paragraph 3. Blue Cross Blue Shield of Michigan will  
7 also pay for any ABA therapy rendered at the gift program at  
8 William Beaumont Hospital for the same period that we  
9 discussed earlier whether or not the insured submitted a claim  
10 with Blue Cross Blue Shield of Michigan and -- and the  
11 assumption underlying this category is that the applicants  
12 would otherwise be eligible for coverage.

13 So our class, our defined class, and again I'm sort of  
14 paraphrasing off the written document here, will be people who  
15 have either made a claim and had that claim denied for the  
16 relevant time period, or would be eligible for coverage had  
17 they made a claim but for one reason or another did not make a  
18 claim.

19 Paragraph 4. Nothing contained in this agreement is  
20 intended to, or shall in any way reduce, eliminate, or  
21 supersede, any obligation to comply with applicable provisions  
22 of relevant state and federal law and regulation.

23 Paragraph 5. Plaintiff will prepare a motion seeking  
24 final approval and final settlement by July the 1<sup>st</sup>, 2009.

25 Paragraph 6. This settlement will in no way affect any

1 claims that anyone might have arising out of Blue Cross or  
2 Blue Shield of Michigan's failure to pay for treatment at  
3 Beaumont Hospital's care program. And that Blue Cross and  
4 Blue Shield will pay a total of \$250,000 that will include  
5 attorney's fees and any incentive fees that would be received  
6 directly by the plaintiff in this matter. Any other terms or  
7 conditions that would be part of the judgment that I have not  
8 mentioned so far?

9 MR. MANTESE: Your Honor, the incentive fee will be  
10 \$3,000. And therefore the attorney's fees and costs are  
11 \$247,000.

12 With respect to Paragraph 2, Your Honor, I guess the  
13 including patient assessment clause should have read,  
14 including but not limited to patient assessment and diagnosis.  
15 Because the way it read it might have sounded as if the actual  
16 therapy wasn't covered. And I know that's not what we  
17 intended.

18 And then the final thing, Your Honor, was that the notice  
19 to the class will be by Blue Cross sending direct mail. They  
20 have the names of the people who submitted a claim and were  
21 denied. They will work with Beaumont to get the names of the  
22 people who never submitted a claim and they'll take care of  
23 the mailing and certify to the Court that they've done so and  
24 bear the costs of that administrative cost. With those  
25 clarifications, Your Honor, we have nothing further.

1 THE COURT: All right. Just to clarify one point.  
2 And that is that the \$247,000 in attorney's fees is inclusive  
3 of past and future attorney's fees associated with either past  
4 services rendered and future services that may be necessary to  
5 complete this matter.

6 MR. MANTESE: That's correct, Your Honor.

7 THE COURT: All right. Mr. Hamilton, any  
8 corrections or additions that you would care to make to what  
9 has been stated on the record so far?

10 MR. HAMILTON: I don't think anything is misstated,  
11 but I want to make sure that there's -- there's no unclarity.  
12 With respect to the claims that are being paid for those  
13 persons that have never submitted a claim to Blue Cross, we  
14 want to make sure that it's clear that payment will be made  
15 only to those persons that got ABA treatment were covered by  
16 Blue Cross Blue Shield of Michigan as opposed to some other  
17 Blue Cross entity or some other insurer.

18 THE COURT: Okay. I think that was understood, but  
19 there's no harm in clarifying the record even further on that  
20 point.

21 MR. HAMILTON: I also want to make clear that we  
22 will not oppose any motion seeking certification of a  
23 settlement to class which may or may not be different than  
24 seeking certification of this action as a class action. What  
25 we need to do and make clear is, this is a settlement class

1 that is being proposed and it's being resolved on that basis.

2 THE COURT: Mr. Mantese, any --

3 MR. MANTESE: That's correct, Judge.

4 THE COURT: All right.

5 MR. HAMILTON: The provision that was read dealing  
6 with an affidavit of the general counsel, I can't say that  
7 that is something that we've agreed to today because I don't  
8 know that that person would have knowledge and would be in a  
9 position to make that certification. But I would say that it  
10 would be subject to some other acceptable confirmation of the  
11 numbers that we're talking about.

12 MR. MANTESE: That's fine, Your Honor.

13 THE COURT: All right. So that the actual signatory  
14 and the -- the affidavit or certification is not critical as  
15 long as it's someone with knowledge of the information that's  
16 relevant to that.

17 MR. MANTESE: That's correct, Your Honor. It should  
18 be someone with -- probably someone with -- with the most  
19 personal knowledge of the issue would be fine. It doesn't  
20 have to be a general counsel.

21 THE COURT: All right.

22 MR. HAMILTON: And then lastly -- two last things  
23 actually. With respect to the administrative procedure, we  
24 have agreed that we will provide the names of those that we  
25 know submitted claims to Blue Cross Blue Shield of Michigan



1 and that we can obtain from Beaumont Hospital, or will attempt  
2 to obtain from Beaumont Hospital, a list of those persons that  
3 received ABA therapy in the time frame that we're talking  
4 about and then provide a list of the individuals of that group  
5 that were covered by Blue Cross Blue Shield of Michigan  
6 insurance or other self funded plans.

7 We can provide that to plaintiff. I don't think that we  
8 have agreed to undertaken actually supplying class notes. I  
9 believe that that's probably something that the plaintiff  
10 ought to be responsible for. But we will provide the  
11 identification and contact information for those individuals  
12 that were Blue Cross participants or beneficiaries.

13 THE COURT: All right. Well, let's make sure we  
14 don't have a disagreement on that. Mr. Mantese, you of course  
15 heard what Mr. Hamilton said.

16 MR. MANTESE: Yes, Your Honor.

17 THE COURT: And basically as I understood it, he was  
18 saying that the -- the names of these potentially eligible  
19 individuals to be members of this class will be provided to  
20 the plaintiff and the plaintiff will actually affect notice?

21 MR. MANTESE: That's fine, Your Honor. That's fine.

22 THE COURT: All right. And one thing that I think  
23 was discussed with both sides, but may not have been clarified  
24 on the record today. And that is that those people who are  
25 currently in the program who may not complete the program by

1 the time the judgment will be entered in this matter, will be  
2 paid fully for their -- for their therapy and treatment they  
3 received in the program.

4 That is if the judgment is entered on say July the 15<sup>th</sup>  
5 for example, just for hypothetical purposes, and -- and those  
6 individuals enter into a three month therapy program starting  
7 today, it doesn't matter when they end in relation to the  
8 entry of the judgment, they'll be paid in full. Mr. Hamilton,  
9 is that accurate?

10 MR. HAMILTON: That's -- that's exactly my  
11 understanding as well. As long as -- as of today they are in  
12 the program, those -- those services will be reimbursed to  
13 cover it.

14 THE COURT: And today being, just so that it's  
15 clear, June the 17<sup>th</sup>, 2009. Mr. Mantese, is that --

16 MR. MANTESE: I agree with that, Your Honor.

17 MR. HAMILTON: The only remaining thing, Your Honor,  
18 and we discussed this in chambers and I assume that it was  
19 discussed with plaintiff's counsel, is that we have agreed  
20 that there will not be any media contact or disclosure of the  
21 terms for at least a 48 hour period to allow Blue Cross to  
22 discuss internally these matters. That there won't be any  
23 contacting, press releases, or publication at least -- for at  
24 least that period of time.

25 THE COURT: I hadn't forgotten that. I was going to

1 mention it, but I'm glad you brought it up. Mr. Mantese, you  
2 have indicated previously that you're willing to agree with  
3 that?

4 MR. MANTESE: That's fine, Your Honor.

5 THE COURT: It's not a provision of the judgment,  
6 but it's just an understanding that goes along with the  
7 agreement that we've reached today.

8 MR. MANTESE: Yes.

9 THE COURT: All right. Having stated all this on  
10 the record, Mr. Mantese, it's your intention to be bound by  
11 the terms of this agreement to complete this resolution.

12 MR. MANTESE: Yes, Your Honor.

13 THE COURT: All right. May I direct a question to  
14 your client?

15 MR. MANTESE: Yes, Your Honor.

16 THE COURT: Mr. Johns, you have been present during  
17 the discussions that have taken place, the settlement  
18 negotiations plus the comments that we've made in Court today.  
19 And you agree personally with everything that your lawyer has  
20 said today about resolving this case?

21 MR. JOHNS: Yes.

22 THE COURT: All right. Mr. Phillips representing  
23 Blue Cross Blue Shield, you also have been present during the  
24 negotiations that have taken place today, been in Court today  
25 when we've commented on the terms of the settlement and you

1 intend to bind Blue Cross Blue Shield to the terms of this  
2 agreement based on what we said today in Court?

3 MR. PHILLIPS: Yes, Your Honor.

4 THE COURT: All right. Anything else we need to put  
5 on the record?

6 MR. MANTESE: Can we just have Mr. Hamilton also  
7 confirm, Your Honor?

8 MR. HAMILTON: Absolutely.

9 THE COURT: I thought he said that earlier, but I'll  
10 certainly reiterate that again and on behalf of your client  
11 Blue Cross Blue Shield of Michigan, you agree to these terms?

12 MR. HAMILTON: Yes, yes.

13 THE COURT: All right. Do -- do we need to prepare  
14 a transcript of today's hearing so that the comments we've  
15 made today will be clear to both sides?

16 MR. MANTESE: Probably a good idea.

17 MR. HAMILTON: Yeah, just so there's no unclarity.

18 THE COURT: All right. I'll arrange for that to be  
19 accomplished and copies of that transcript will be sent to  
20 both sides of the case.

21 MR. MANTESE: Thank you, Your Honor.

22 THE COURT: Anything further?

23 MR. HAMILTON: All right. Thank you for your -- for  
24 your efforts, it's greatly appreciated.

25 THE COURT: More than happy to -- to resolve the

1 matter. Again it's a pleasure working with good lawyers who  
2 are willing to address matters in a professional way and the  
3 parties who are willing to compromise their interest to  
4 achieve an equitable and fair result in this matter. So thank  
5 you all.

6 MR. MANTESE: Thank you, Judge.

7 (Court Adjourned at 2:58 p.m.)  
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I certify that the foregoing is a correct transcript from the  
electronic sound recording of the proceedings in the  
above-entitled matter.

/s/Deborah L. Kremlick, CER-4872

Dated: 7-6-09